IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5821 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIMAL SHANTILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR TS NANAVATI for Petitioner

MR HL JANI, Learned APP for Respondent No. 1

MR UTPAL M PANCHAL for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/11/2000

ORAL JUDGEMENT

1. Rule. Mr. H.J.Jani, learned APP waives service

of rule on behalf of respondent no.1 State. Mr. U.M.Panchal, Learned advocate for the petitioner waives service of rule on behalf of respondent no.2.

2. The petitioner has prayed to quash the process issued by learned JMFC, Porbandar vide order dated 24.6.1999 in the proceedings of Criminal Case No. 7744 of 1999.

3. It is averred and contended by the petitioner that the present respondent no.2 has filed Criminal Case No. 7744 of 1999 in the Court of learned JMFC, Porbandar on 24.6.1999 alleging that present petitioner, as an accused, has committed offences punishable under Sections 406 and 420 of the Indinal Penal Code. That it is alleged in the said complaint that the petitioner had given a cheque dated 16.1.1999 drawn on Surat District Cooperative Bank Ltd. bearing No. 0477893 for the amount of Rs. 92,500/- was given to the respondent no.2 towards payment of amount due. That said cheque was discounted by the respondent no.2 through his Bank and cheque was dishonoured on 28.4.1999 with an endorsement that said account of the petitioner was closed on 22.1.1999. That despite demand notice, the amount has not been paid and the petitioner has refused to accept the notice. On the said basis, the complaint is lodged.

Learned JMFC, Porbandar having recorded verification of respondent no.2 has issued summons against the present petitioner vide impugned order dated 24.6.1999 for the offences made punishable under Sections 406 and 420 of the Indian Penal Code.

4. Mr. T.S.Nanavati, learned advocate for the petitioner has submitted that apart from technical aspect that averments made in the impugned complaint are insufficient to constitute any of the offence alleged in the complaint and as such, no process should have been issued by the learned JMFC, Porbarndar on the basis of said averments and even verification of the statement, the real fact as set out in the petition has not been explained or denied by respondent no.2 Mr. Nanavati, learned advocate for the petitioner has referred to and relied on the averments made in para.2.2 of the petition contending the facts that on account of dispute between the petitioner and one M/s. Zariwala Shah and Associate where one Mr. Anoopbhai Jashwantlal Jariwala, Dakesheshkumar Jashwantlal Jariwala and Deepkkumar Kantilal Shah were partners, the impugned complaint is filed. That the property was agreed to be sold to M/s. Zariwala Shah and Associate by the present petitioner,

his brother and wife of his brother on the terms and conditions stated in the agreement to sell, xerox copy of which is produced vide Annexure-B. There was a dispute between the said parties and in order to extract money from the petitioner, the respondent no.2 who is an accomplice of the partners of said Zariwala Shah & associates obtained signature of the petitioner on the cheque and on some documents and due to fear of said antisocial elements, the petitioner could not file any complaint. However, the respondent no.2 instead of resorting to remedy available for filing complaint under Section 138 of the Negotiable Instrument Act has filed present complaint simply to bring pressure on the petitioner. The said facts averred in the petition are supported by the documentary evidence produced at Annexure B and C.

5. It would be pertinent to note that earlier notice was issued to the respondent and the respondent has appeared through advocate and has filed affidavit-in-reply which is taken on record vide page-27 to 29. The perusal of affidavit-in-reply suggests that except bare denial, there is no explaination of any fact as alleged in the petition against respondent no.2 and his accomplice in respect to obtaining disputed cheque from the petitioner by using coercive force. Not only that, Mr. Panchal, was not in a position to point out whether facts averred in the impugned complaint, copy of which is produced at Annexure-A, could constitute any of the ingredient of the alleged offences punishable under Sections 406 and 420 of the Indinal Penal Code.

6. Apart from the fact pleaded by the petitioner to explain how the cheque signed by him has gone in the hand of the respondent no.2. The crux of the matter would be whether learned JMFC, Porbandar has exercised the power in accordance with law while passing impugned order or not. Bare reading of complaint, copy of which is produced at Annexure-A, suggests that none of the ingredients of Sections 406 or 420 are averred therein and no facts are stated in verification by the complainant. In view of the said fact, the power exercised by learned JMFC, Porbandar in issuing summons against the petitioner cannot be said to be in accordance with law and thereby, the order deserves to be quashed and set aside.

7. On the basis of above stated discussion, the impugned order dated 24.6.1999 passed by the learned JMFC, Porbandar in the proceedings of Criminal Case No. 7744 of 1999 is hereby quashed and set aside. Rule to

that extent made absolute. No order as to costs.

(A.K.Trivedi,J.)

(vipul)